

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:	Simon-SPG Tennessee LP	)
	Parcel ID #059-02609	) Knox County
	Commercial Property	)
	Tax Year 2006	)

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$3,726,400	\$2,304,800	\$6,031,200	\$2,412,480

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 28, 2007 in Knoxville, Tennessee. In attendance at the hearing were registered agent Patrick W. Musgrave, John Whitehead, Knox County Property Assessor, and staff appraiser Jim Beck.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property, commonly known as the Knoxville Commons Shopping Center, consists of a 23.66 acre site improved with big box space and a tire store containing a total of 134,400 square feet of leaseable space divided as follows:

<u>Tenant</u>	<u>Square Footage</u>
Office Max	23,500
Carolina Pottery	67,900
Circuit City	34,100
National Tire	<u>8,900</u>
	134,400

Subject property is located at 2940 Knoxville Center Drive adjacent to the Knoxville Center Mall.

The taxpayer contended that subject property should be valued at \$4,042,100. In support of this position, a pro forma income approach was introduced into evidence. In addition, Mr. Musgrave maintained that subject property experiences a loss in value because approximately 7.6 acres cannot be developed due to the severe slope and its use as a retention pond. Mr. Musgrave also noted that the Carolina Pottery space is 215' deep which he asserted is 3 to 4 times the depth typically required by prospective lessees.

The assessor contended that subject property should remain valued at \$6,031,200. In support of this position, Mr. Whitehead introduced the Target Corporation's January 9, 2005 purchase of a nearby 40 acre tract for \$10,000,000 or \$250,000 per acre. Mr. Whitehead



noted that a portion of the usable acreage was going to be used by Target for water retention. Mr. Whitehead maintained that subject land alone supports the current appraisal of subject property (23.66 acres at 250,000/ac = \$5,915,000). Mr. Whitehead also took issue with Mr. Musgrave's assumed rental rates.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$6,031,200 based upon the presumption of correctness attaching to the decision of the Knox County Board of Equalization.

Since the taxpayer is appealing from the determination of the Knox County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal seemingly concerns highest and best use. On the one hand, Mr. Musgrave stressed the distressed nature of the center. For example, Mr. Musgrave noted that the Carolina Pottery Space has been vacant for six of the last ten years and Office Max has a year-to-year lease under which it pays only percentage rent. On the other hand, Mr. Whitehead contended that subject land alone is worth approximately \$6,000,000.



The administrative judge finds that when considered collectively, the parties contentions indicate that the present use of subject property may not represent the highest and best use. As explained in one authoritative text:

Land value must always be considered in terms of highest and best use. Even if the land has improvements, the land value is based on its highest and best use as though vacant and available for development to its most economic use. . . .

Highest and best use is also affected by how much the existing improvements contribute to property value. Land value may be equal to, or even greater than, total property value, even when substantial improvements are located on the site. The contribution of the improvements is estimated by subtracting the market value of the land from the market value of the total property. When improvements do not contribute to the overall property value, demolition is usually appropriate. . . .

The cost of converting the property into vacant land may be a penalty and deducted from the value of the land. However, to achieve the highest and best use of the land with another use, the cost to raze the improvements is added to the land value to reflect the value of the land as though vacant. In some cases the cost of converting the property into vacant land is a penalty to be deducted from the value of the land.

Appraisal Institute, *The Appraisal of Real Estate* at 334 (12<sup>th</sup> ed. 2001).

The administrative judge finds Mr. Whitehead’s unrefuted testimony indicated that the retention pond serves both subject property and the mall which have common ownership. Mr. Whitehead’s unrefuted testimony also indicated that some of the acreage purchased by the Target Corp. was for retention purposes. The administrative judge finds the foregoing facts support the conclusion that at least some of the 7.6 acres Mr. Musgrave discounted as having no value do indeed have value in the market. Absent additional evidence, the administrative judge cannot determine what percentage of the 7.6 acres is necessary for the retention pond.

The administrative judge finds that Mr. Musgrave’s analysis cannot provide a basis of valuation for at least two additional reasons. First, except for the Rush Fitness Center lease, no rent comparables were introduced into evidence. Accordingly, the administrative judge finds that the taxpayer introduced insufficient evidence to substantiate Mr. Musgrave’s assumed market rents. Second, the taxpayer did not introduce into evidence either a cost approach or sales comparison approach.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$3,726,400	\$2,304,800	\$6,031,200	\$2,412,480



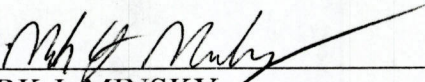
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of April, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Patrick W. Musgrave, Esq.  
John R. Whitehead, Assessor of Property